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No. 89-104

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

RANDALL B. WOODFIELD,

Petitioner,

—v.—

ANN RULE (a/k/a "ANDY STACK"), and
NEW AMERICAN LIBRARY, INC.,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MARC D. BLACKMAN
RANSOM, BLACKMAN & SIMSON
900 American Bank Building
621 S.W. Morrison
Portland, Oregon 97205
(503) 228-0487

JAY WISHINGRAD*
EDWARD H. ROSENTHAL
FRANKFURT, GARBUS, KLEIN
& SELZ, P.C.
488 Madison Avenue
New York, New York
(212) 980-0120

Counsel for Defendants-Respondents

* Counsel of Record

Counterstatement of Question Presented:

Whether petitioner, an inmate sentenced to life imprisonment plus 125 years for Murder, Attempted Murder, and two counts of First Degree Sodomy, who is not a member of a suspect class and is entitled to the same Oregon statute of limitations for libel and invasion of privacy as every other unincarcerated citizen of Oregon, but does not get the benefit of Oregon's law that tolls the statute of limitations for inmates who are serving a sentence for a term of less than life, has failed to show that this legislative classification is irrational and bears no reasonable relationship to the furtherance of a legitimate state purpose so as to violate the Equal Protection Clause of the Fourteenth Amendment to the United States

Constitution and the equivalent provision in Article 1, § 20 of the Oregon Constitution?

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RULE 28.1 LIST

New American Library, Inc. ("NAL") is now, by change of corporate structure, an unincorporated division of Penguin Books USA Inc.

The parent company of Penguin Books USA Inc. is Pearson Inc.

All subsidiaries of Penguin Books USA Inc. are wholly owned.

Counterstatement of the Case

In 1982, petitioner Randall B. Woodfield ("Woodfield") was convicted of Murder, Attempted Murder, and two counts of First Degree Sodomy. See State v. Woodfield, 62 Or. App. 69, 659 P.2d 1006 (1983), rev. den., 295 Or. 259. Appendix ("A.") 2a. These convictions were for "several serious crimes along the interstate highway." Id. at 71, 659 P.2d at 1008. A. 2a. As a result, Woodfield gained notoriety (as well as judicial recognition) "as being the 'I-5' Bandit." Ibid. A. 2a. Woodfield was sentenced to life imprisonment plus 125 years. Woodfield's application for parole was denied by the Oregon Board of Parole on December 18, 1985. There will be no reconsideration of this decision. ORS 144.120(4); OAR 255-35-030.

Woodfield will be in prison for the rest of his life.

On March 5, 1984, respondent New American Library, Inc. ("NAL") published a book written by respondent Ann Rule ("Rule"), titled The I-5 Killer (the "Book"). A. 2a. On April 29, 1987, more than three years after the publication of the Book, Woodfield filed a libel and invasion of privacy suit in the United States District Court for the District of Oregon. A. 1a. Oregon requires that a libel claim be filed within one year of the offending publication. ORS 12.120(2). A claim arising out of invasion of privacy must be filed within two years of the act. ORS 12.110.

The "Order and Findings and Recommendation," filed by the United States Magistrate for the District Court, recommended that the "defendants' motion

for summary judgment should be granted." A. 2a. Since petitioner was serving a life sentence, that is, a term for his natural life, the Magistrate found that the plain language of Oregon's tolling statute, ORS 12.160(3)[1] did not apply to petitioner.[2] Petitioner unsuccessfully argued that it did apply. Therefore, the Magistrate recommended that petitioner's complaint be dismissed

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1 ORS 12.160(3) provides, in relevant part, that any person "imprisoned on a criminal charge, or in execution under the sentence of a court for a term less than the person's natural life is entitled to a tolling of the statute of limitations for up to five years."

2 The basic practice of the Supreme Court is to defer to the lower court's construction of a state statute. William L. Webster, Attorney General of Missouri, et al v. Reproductive Health Services, et al, 57 U.S.L.W. 5023, 5029 (U.S. July 3, 1989).

"because of the untimely filing of the complaint." A. 4-5a.

After de novo review, the United States District Court for the District of Oregon adopted the Magistrate's order and "Findings and Recommendation" that "defendants' motion for summary judgment should be granted." Thus it was ordered on January 11, 1988 that the complaint be dismissed as untimely filed. A. 6a.

Woodfield appealed the summary judgment, dismissing his action as barred by the statute of limitations, to the United States Court of Appeals for the Ninth Circuit. A. 9a. The Ninth Circuit affirmed. A. 12a. The Court's unanimous decision was based on state and federal constitutional issues.

The Ninth Circuit concluded that the tolling statute's exclusion of those serving life sentences was neither

arbitrary nor irrational. A. 12a. The Ninth Circuit determined that the Oregon legislature could have reasonably determined that the distinction among inmates served several state interests. A. 11a. The Ninth Circuit, accordingly, affirmed the dismissal of petitioner's complaint. A. 12a*. No petition for rehearing was sought.

On July 20, 1989, petitioner filed a petition in this Court for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit.

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* In light of its ruling, the Ninth Circuit did "not reach defendant's contention that Woodfield is 'libel proof'". A 16a.

Reasons For Refusal of the Writ

The Ninth Circuit Properly Affirmed the Dismissal of the Case

A. THE PROVISION OF OREGON LAW TOLLING THE STATUTE OF LIMITATIONS APPLICABLE TO SOME PRISONERS, BUT NOT THOSE SERVING LIFE SENTENCES, WHO HAVE THE SAME STATUTE OF LIMITATIONS AS ALL OTHER UNINCARCERATED CITIZENS OF OREGON, DOES NOT VIOLATE PETITIONER'S CONSTITUTIONAL RIGHTS.

Petitioner claims that his exclusion from enjoying the limited benefit extended to non-lifers under the Oregon tolling statute ORS 12.160(3) -- which leaves him with the same statute of limitations for libel and invasion of privacy as all other unincarcerated citizens of the State of Oregon -- violates his right to equal protection under the United States and Oregon Constitutions. His claim, as

demonstrated below, is completely meritless.

Petitioner does not argue, nor can he, that he is a member of a suspect class. Nor does the challenged provision affect a fundamental right. As the Ninth Circuit determined: "The tolling statute does not create or deny a prisoner's right to commence legal action, it merely extends the time in which to file, so a fundamental right of access to the courts is not involved. Harris v. Craig, 299 Or. 12, 697 P.2d 189, 190 (1985)." A. 13a.

Thus, the constitutionality of the limited exception included in the tolling statute must be analyzed under the classic rational relationship test. Vance v. Bradley, 440 U.S. 93, 96-97 (1979). Under this analysis, the challenged legislation is upheld unless

it bears no reasonable relationship to the furtherance of a legitimate state purpose and is irrational. Id. at 97; United States v. Alexander, 673 F.2d 287, 288 (9th Cir. 1982), cert. denied, 459 U.S. 876 (1982). United States v. Holmes, 838 F.2d 1175, 1178 (11th Cir. 1988) cert. denied, 108 S. Ct. 2829 (1988); United States v. Holland, 810 F.2d 1215, 1218 (D.C. Cir. 1987), cert. denied, 481 U.S. 1057 (1987). And the classification need only be plausible, arguable, or conceivable. Jackson Waterworks, Inc. v. Public Utilities Commission, 793 F.2d 1090, 1094 (9th Cir. 1986), cert. denied, 479 U.S. 1102 (1987).

To prevail in his attack on ORS 12.160(3), petitioner must make a clear showing of arbitrariness. Hodel v. Indiana, 452 U.S. 314, 331 (1981). If the reasonableness of the classification

is even debatable, the court must defer to the legislature and uphold the statute because the legislature possesses superior fact finding ability and has sufficiently considered the appropriateness of the classification. Vance v. Bradley, 440 U.S. 93 (1979). Furthermore, it is not up to the courts to decide whether the statute will actually achieve its asserted goals. If the legislature could rationally have concluded that the statute might promote its goals, then the classification is reasonable and constitutional. Minnesota v. Clover Leaf Creamery Co., 449 U.S. 456 (1981).

What is more, state legislatures have been accorded extreme deference with respect to statutes of limitations. In Chase Securities Corporation v. Donaldson, 325 U.S. 304, 314 (1945), the

Supreme Court recognized that it is not the province of the courts to scrutinize the logic or fairness of statutes of limitations, and explained why:

> Statutes of limitations find their justification in necessity and convenience rather than in logic. They represent expedients, rather than principles. . . . They are by definition arbitrary, and their operation does not discriminate between the just and unjust claim, or the voidable and unavoidable delay. They have come into the law not through the judicial process but through legislation. They represent a public policy about the privilege to litigate. Their shelter has never been regarded as what now is called a "fundamental" right or what used to be called a "natural" right of the individual. He may, of course, have the protection of the policy while it exists, but the history of pleas of limitation shows them to be good only by legislative grace and to be subject to a relatively

large degree of legislative control.

Thus courts do not invalidate statute of limitations provisions simply because they apply different rules to different sets of individuals. Pottratz v. Davis, 588 F. Supp. 949 (D. Md. 1984) (rejecting challenge to distinction made by Oregon legislature between claims for asbestos related injuries and claims for Dalkon Shield related injuries); Wayne v. Tennessee Valley Authority, 730 F.2d 392 (5th Cir. 1984) cert. denied, 469 U.S. 1159 (1985); see also Hargett v. Limberg, 598 F. Supp. 152 (C. D. Utah 1984), rev'd on other grounds, 801 F.2d 368 (10th Cir. 1986) (rejecting challenge to tolling provision for medical malpractice claims which excluded minors and incompetents).

The Ninth Circuit found that the legislature could have reasonably

concluded that the Oregon tolling statute, which provides additional time for persons imprisoned for a period of years, as opposed to lifers such as petitioner, serves several state interests -- not just one. A. 14-15a. The Court articulated three state interests: (1) granting additional time for inmates to marshall resources to bring claims; (2) sparing the prison system the logistical problems of inmates involved in litigation; and (3) removing the stigma of being an inmate if granted additional time. Id.

All of these state interests are rational and, indeed, reasonable. And the Oregon tolling statute, which is an act of legislative grace, is amply supported by any one of these three substantial state interests.

Thus, for example, it is logical to extend the tolling provision to non-lifers so as to enable them, upon their release, to gather resources to bring their claims. It is, however, illogical to extend this benefit to "lifers" who will never be released.

As a corollary, the classification scheme serves the state's interest in sparing a correctional institution the substantial adminstrative burden of maintaining the safety and security of the institution while tending to additional inmates' litigation from within. Litigation does, of course, occur from within Oregon prisons, as petitioner discusses. But the tolling statute functions to prevent certain additional litigation (e.g., libel and invasion of privacy claims), which does not involve the underlying conviction or

prison conditions, from being conducted with difficulty and danger from prison. This furthers administrative convenience and removes the strains brought upon the already heavily burdened prison administration by active jail-house lawyers. Hence, the prison administration is spared the security and other logistical problems that would attend additional, non-prison related litigation conducted from inside a prison.

Finally, those serving a fixed term are granted additional time so that at least some will be able to pursue their claims without the stigma of being inmates. Even if an ex-inmate's former status is admitted into evidence, as petitioner argues based on State v. King, 307 Or. 332 (1989), a former inmate (or his attorney) could -- but a "lifer" such as petitioner could not -- argue

forcefully that he had paid his debt to society, having served his requisite prison sentence. Such an argument would go far to blunt any stigma.

None of these considerations, however, apply to an inmate, such as petitioner, serving a life sentence. His situation is not going to change. Excluding "lifers" from an extension of the statute of limitations, therefore, is perfectly rational. The fact that this exclusion works to the detriment of a given prisoner does not make it unconstitutional. Indeed, the legislature could have decided as a matter of policy that persons convicted of crimes so grave as to warrant life sentences should not be granted a benefit, such as an extension of statute of limitations. This is particularly so here, where "lifers," such as petitioner,

are subject to the same statute of limitations as all other unincarcerated citizens of Oregon.

Petitioner has made no showing, nor could he, that Oregon's distinction between "lifers" and those serving lesser sentences is irrational. Rather, he argues that this distinction is inconsistent with the "trend" in other states. However, as this Court has held, the constitutionality of the measure does not depend on a Court's assessment of its wisdom, or of its empirical success or failure. It is sufficient if the legislature "could rationally have decided" that the means chosen will promote the legislative objectives. Minnesota v. Clover Leaf Creamery Co., 449 U.S. 456, 466 (1981).

Furthermore, petitioner does not cite a single case in support of his

claim that Oregon's tolling statute is unconstitutional. Where there is evidence before a legistature reasonably supporting a classification attacked as without a rational basis, litigants may not procure invalidation under the equal protection clause merely be tendering evidence in court that the legislature was mistaken. Id. Petitioner however, does not provide any evidence to support the notion that marshalling resources is not a legitimate state interest. He merely states that it is unrealistic. Similarly, petitioner argues that the logistical advantages of former inmates litigating outside of prison is in conflict with express legislative policy. Petitioner bases this argument on the fact that inmates can litigate from within, as authorized by the State Department of Corrections. This policy

does not contradict the rational basis behind allowing certain inmates to wait until after release to initiate litigation not related to their conviction nor to the conditions of their confinement. Rather, the prison administration is spared the considerable administrative difficulties of certain additional litigation from within the prison that, but for the tolling statute, would have to be commenced while the inmate was still behind bars.

In sum, petitioner is afforded the same benefits under the statute of limitations as any other Oregon citizen. Petitioner is no worse off than any other unincarcerated citizen of Oregon to whom the statute of limitations equally applies.

The logical, and dangerous, extension of petitioner's argument is

that any citizen of Oregon who failed to exercise his or her rights within the requisite statute of limitations period, but did so within the tolling period, yet did not receive the benefit of it, would have a constitutional right to be included in the statutory scheme. This is simply absurd. And petitioner's claim is far worse. Indeed, it is meritless.

Petitioner has failed to show that the denial of the benefit of the Oregon tolling statute violates his constitutional rights.

CONCLUSION

For the foregoing reasons, it is submitted that the Petition For Writ of Certiorari should be denied.

Respectfully submitted,

Marc D. Blackman
Ransom, Blackman & Simson
900 American Bank Building
621 S.W. Morrison
Portland, Oregon 97205
(503) 228-0487

Jay Wishingrad*
Edward H. Rosenthal
Frankfurt, Garbus, Klein &
Selz, P.C.
488 Madison Avenue
New York, New York 10022
(212) 980-0120
Attorneys for
Defendants-Respondents
*Counsel of record

Ms. Gwen Borins of Georgetown University Law Center assisted in the preparation of this Brief.

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